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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

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In re Application of:

Kawa, et al

Serial No.: 10/038,296

Art Unit: 1761

Filed: Januray 2, 2002

For: Infused Sake and Process
for Making Same

Examiner: Sherrer, Curtis

DECLARATION UNDER 37 CFR 1.132

I, Abednego Barnes, hereby declare:

1. I am a trained sake brewer and experienced in the art of sake brewing. My resume or curriculum vitae is attached. I am a recognized expert in the art of sake brewing, and well acquainted with the level of ordinary skill in the sake brewing art.

2. I am a consultant of Kintaro Sake, the assignee of U.S. Patent Application 10/038,296. As a consultant, I work with Kintaro Sake in developing recipes for products and designing brewery and blending facilities.

3. I have reviewed the U.S. Patent Application 10/038,296, including the claims and the rejections presented by the Examiner.

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4. As I understand it, the application claims a process of making sake in which sake, which necessarily has an alcohol content of 14-20%, is mixed with fruit, aged, separated, and pasteurized. After pasteurization, the claimed process requires the addition of preservative.

5. There is a clearly established cultural aversion in the art to the addition of preservatives to sake. No one in the art would be motivated to add preservatives in view of the universal teaching in the art to avoid it.

6. Addition of preservatives to sake would be perceived in the art as unnecessarily redundant. The alcohol content of sake is quite high. The high alcohol content is a notorious preservative, and it is well known that lower alcohol content wines might require the addition of highly undesirable sulfites.

7. Addressing an issue raised by the Examiner in the latest office action, where the Examiner notes the "the pasteurization process of the instant process is used in the prior art to inactivate enzymes that would not be inactivated by any other means," I disagree with the implication that this would motivate one in the art to add preservatives in addition to all of the other preservative steps (alcohol, pasteurization, addition of fruit acids) mentioned in the claims. After pasteurization, alcohol creation at higher concentration, and the addition of the naturally occurring fruit acids, no one in the art would have reason to add yet another preservative step. It would not be understood in the art that any benefit would likely be achieved by four distinct preservative steps.

8. Addressing an issue raised by the Examiner, the common addition of sulfites to wine provides no motivation to add preservatives to sake. Wine made from grapes requires sulfites

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to control undesirable yeast and bacteria, which is not present in sake. A sake brewer would have no motivation to add sulfites to sake.

9. I could not predict the effect of preservatives on the flavor of sake. I have tasted the Kintaro sake produced under the claimed method, and it tastes unique and refreshing. I did not detect the preservative.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, and any patent issuing thereon.

Date: February 4, 2005

By:


Abednego Barnes